

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

<b>Illinois Commerce Commission</b>	)	
<b>On its own motion.</b>	)	
	)	<b>Docket 01-0485</b>
<b>Adoption of 83 Ill. Adm. Code Part 732.</b>	)	<b>On Rehearing</b>

**INITIAL BRIEF ON REHEARING OF**  
**ALLEGIANCE TELECOM OF ILLINOIS, INC.**

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## **I. Introduction and Summary of Position**

The Commission adopted 83 Illinois Administrative Code Part 732, “Customer Credits” (Part 732” or “the Rule”) in response to the enactment, in 2001, of §13-712 of the Public Utilities Act (“Act”), 220 ILCS 5/13-712, which became effective June 30, 2001. Although §13-712(c) gave the Commission one year (until June 30, 2002) to adopt the rules required by §13-712, the Commission, “[g]iven the urgency of bringing the benefits of Section 13-712 to customers” (Order in Docket 01-0485, Nov. 29, 2001, p. 1), used its emergency rulemaking powers under the Administrative Procedure Act (“APA”) to adopt Part 732 on an emergency basis, effective August 1, 2001. Because, under the APA, an emergency rule can only be in effect for 150 days, it was necessary for the Commission to adopt Part 732 on a permanent basis by December 29, 2001. The Commission did so by conducting a notice and comment proceeding, without hearings, and adopted Part 732 as a permanent rule effective December 29, 2001.

Allegiance Telecom of Illinois, Inc. (“Allegiance”) is a competitive local exchange carriers (“CLEC”) that provides basic local exchange service in areas also served by an incumbent local exchange carrier (“ILEC”), Ameritech Illinois (“Ameritech”). Allegiance provides retail service using (at least in part) network elements and other wholesale services provided by Ameritech. Allegiance and McLeodUSA Telecommunications Services, Inc. (“McLeodUSA”) requested and were granted rehearing on an issue relating to the definition of “appointment” in §732.10 of the Rule, and the related provision in §732.30(c), that together require local exchange carriers (“LEC”) to schedule appointments at customer premises to install or restore service within four-hour windows, and to give the customer 24 hours notice to cancel an appointment.<sup>1</sup> Allegiance and McLeodUSA requested rehearing of this provision because

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<sup>1</sup>This issue has been designated as “Issue 1” for this rehearing.

they are dependent on actions by Ameritech to provision the majority of their new service installations and to repair the majority of existing installations. At present, the processes in place for installing and repairing service do not enable Allegiance and McLeodUSA to obtain commitments from Ameritech to schedule and keep customer appointments within a four-hour window on a consistent and reliable basis. (Allegiance App. for Reh., p. 2; McLeodUSA App. for Reh., p. 2) Allegiance and McLeodUSA presented several alternative revisions to §732.10 and §732.30(c) that would address this problem for CLECs.

Among other alternatives, Allegiance proposed that the four-hour window requirement be postponed for CLECs until June 30, 2003, to allow adequate time to develop the necessary processes and procedures with Ameritech. (See Allegiance Ex. 1.0, p. 7, and McLeodUSA Ex. 1.1 Rev.) In this rehearing, Commission Staff witness Sam McClerren recommended that compliance with the four-hour window requirement for scheduling appointments be postponed until December 31, 2002, for carriers that use the resold services, network or network elements of another carrier to provide service to the customer, in order to give the CLECs' underlying carriers more time to make necessary modifications to their operations support systems ("OSS") to implement the four-hour window requirement. (See Staff Ex. 1.0 Rev., pp. 2-3) During this period, LECs using the resold services, network or network elements of another carrier would be allowed to schedule installation and repair appointments requiring a customer premises visit for a particular day, and would be required to give the customer notice to cancel an appointment by the end of the preceding business day. (McLeodUSA Ex. 1.0, pp. 7-8; McLeodUSA Ex. 1.1 Rev.)

Allegiance believes that the Commission should postpone implementation of the four-hour appointment requirement for CLECs to June 30, 2003, in order to insure that there is

adequate time for the necessary changes to Ameritech's processes and procedures to be developed and put in place for all CLECs. Allegiance has requested that Ameritech provide Allegiance with 24-hour repair commitments and four-hour appointment windows, but as of the time Allegiance's testimony was filed in this docket, Ameritech had not responded with any assurance that it would work toward a process to provide 24-hour repair windows, nor provide commitments to completing repairs within 24 hours. (Allegiance Ex. 1.0, p. 6-7) However, McLeodUSA reported in its rebuttal testimony that it has been making progress in working with Ameritech towards developing procedures and processes that would result in Ameritech supporting the CLECs' installation and repair needs such that a CLEC would be able to reliably schedule appointments with its customers within four-hour windows. (McLeodUSA Ex. 1.2, pp. 1-2) Given this reported progress, Allegiance could accept Mr. McClerren's recommendation, depending on Ameritech's response to information requests made by the Administrative Law Judge ("ALJ") and Staff at the hearing. Specifically, Staff and the ALJ requested that the Ameritech witness provide a report as to the status of Ameritech's efforts to develop revised processes and procedures, as well as confirmation that Ameritech would make any process and procedure changes on this topic available to all CLECs. The ALJ left the record open in order to be able to receive this information. As of the date of this brief, Ameritech's response is not known nor in the record. Assuming that Ameritech responds with a progress report indicating that the necessary changes to its processes and procedures (or new processes and procedures) are likely to be in place, and made available to all CLECs, by December 31, 2002, then Allegiance could accept Mr. McClerren's recommendation.<sup>2</sup>

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<sup>2</sup>Allegiance would still request that the Commission's order on rehearing recognize the possibility that compliance with the four-hour window requirement for CLECs may need to be

## **II. Issue 1: Sections 732.10 and 732.30(c) – Four-Hour Window for Appointments**

Section 732.10 of the Rule as adopted by the Commission effective December 29, 2001, specifies that an appointment for a customer premises visit must be scheduled within a four-hour window, while §732.30(c) of the Rule requires that if an LEC fails to keep a scheduled installation or repair appointment when a customer premises visit requires the customer to be present, the carrier must credit the customer \$50 per missed appointment, unless the LEC has given the customer at least 24 hours notice to cancel the appointment, measured from the end of the four-hour window on the previous day. Allegiance and McLeodUSA recognize that for competitive reasons, they need to be able to comply with these requirements in the long run. (See McLeod USA Ex. 1.0, pp. 5, 10; McLeodUSA Ex. 1.2, p. 2) At the present time, however, as Allegiance witness Richard Baever and McLeodUSA witness Rod Cox explained, compliance is essentially impossible for CLECs due to their dependence on Ameritech to perform installation and repair work on portions of Ameritech's network used by the CLECs to provision service to their retail customers, and their inability to obtain commitments from Ameritech that will enable them to schedule and keep installation and repair appointments with their customers within four-hour windows on a consistent and reliable basis. (Allegiance Ex. 1.0, pp. 2-3; McLeodUSA Ex. 1.0, p. 5) Allegiance and McLeodUSA therefore requested either (i) elimination, for LECs using the resold services, network or network elements of another carrier to provide service, of the requirement to schedule installation and repair appointments within four-hour windows; or (ii) postponement of the requirement for a period of time to allow the necessary processes and procedures to be developed with Ameritech (and other ILECs) that will enable CLECs to schedule and keep installation and repair appointments with their customers

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further extended to no later than June 30, 2003, if Ameritech is in fact unable to develop and implement the necessary OSS modifications for all CLECs by December 31, 2002.

within four-hour windows on a consistent and reliable basis, even where the work that necessitates the appointment is being performed by the ILEC.

Allegiance witness Richard Baever, Allegiance's Field Operations Manager responsible for managing its installation and repair activities in the Chicago area (Allegiance Ex. 1.0, p. 1), explained the circumstances under which Allegiance must rely on commitments from Ameritech in connection with installation and repair of service. He described the underlying processes with respect to a common type of repair order, "no dial tone". Upon receiving such a call, Allegiance performs a remote test to determine if the trouble is on Allegiance's network or Ameritech's network. (Id., p. 3) If the problem is isolated to Ameritech, Allegiance contacts Ameritech (either via a web-based interface or by telephone) to open a trouble ticket. (Id., pp. 3-4) Ameritech routinely commits to respond to the trouble report for business lines within 24 hours, although Ameritech does not necessarily complete the repair within 24 hours. During this period, Ameritech typically performs its own loop test, and will dispatch a technician to Allegiance's customer's premises if a premises visit is necessary. However, depending on when Ameritech refers the trouble ticket to the relevant central office, the ticket may not be picked up by an Ameritech technician for up to 12 hours. (Id., p. 4) Further, Ameritech does not have a process in place to notify Allegiance when a premises visit is scheduled so that Allegiance can in turn notify the customer. Nor does Ameritech estimate within a four-hour window when its technician will visit the premises. (Id.) Moreover, Ameritech will often place a trouble ticket on hold without notifying Allegiance. (Id., pp. 4-5) All of this makes it impossible for Allegiance to schedule an appointment with its customer within a four hour window, and give 24 hours notice to cancel the appointment, when a premises visit is required for work on Ameritech's network.

With respect to installation of service, no premises visit is usually necessary if an existing Ameritech customer is converting its basic local service to Allegiance. (Allegiance Ex. 1.0, p. 5) However, for all add and move orders, an Ameritech technician must be dispatched to the Allegiance customer's premises. (Id.) Ameritech generally commits in advance to make the visit on a particular date, but not during a four-hour window. As a result, Allegiance is able to tell its customer that the Ameritech technician's visit will be on a specific day, but cannot reliably estimate a four-hour window for the visit. (Id., pp. 5-6). As Mr. Baever summarized:

Because Ameritech does not make the four-hour appointment window commitments to Allegiance that the rule requires, Allegiance cannot make such commitments to its customers. . . . Ameritech currently makes no specific commitments to Allegiance with respect to when Ameritech's technician will arrive at our customer's premises for a repair. For add or move installation orders, Ameritech usually commits in advance to a day when it will make a necessary premises visit, but does not commit to a four-hour window. As a result, Allegiance cannot commit to its own customers with confidence that a premises visit will occur during a four-hour window. Similarly, Allegiance is unable to give 24 hours' notice when a premises visit will not be made within a specific four-hour window. (Allegiance Ex. 1.0, pp. 2-3)

McLeodUSA witness Rod Cox, Senior Manager of Performance and Compliance, described similar problems in meeting the four-hour window requirement for appointments. McLeodUSA is unable to schedule appointments at its customer's premises within four-hour windows that it has confidence in keeping because McLeodUSA's principal wholesale provider, Ameritech, will not provide McLeodUSA with a corresponding appointment, or with a commitment to complete any needed work in a time frame that will support the four-hour window. (McLeodUSA Ex. 1.0, p. 6) Generally, Ameritech will only provide a commitment as to when it will have the work done (e.g., by 4 P.M. the following day). (Id.) As another example, Ameritech will often change "hot cuts" that are scheduled customer conversions to "all day commits", and often notifies McLeodUSA of this change on the day it is made. (Id., pp. 10-



11) This makes it difficult if not impossible for CLECs to make appointments with their customers (in those situations in which a customer premises visit is needed in connection with the hot cut), and also prevents CLECs from complying with the requirement to give 24 hours notice to the customer of a missed appointment.<sup>3</sup> (Id.) Finally, this situation cannot be resolved by sending a McLeodUSA technician to do the necessary work on Ameritech's network, since Ameritech (quite appropriately) will not allow McLeodUSA technicians to do repairs on Ameritech's network. (Id., p. 7) The end result, however, is that McLeodUSA is dependent on Ameritech's wholesale responsiveness in meeting the requirements of Part 732. (Id.)

Mr. Baever and Mr. Cox described the consequences to CLECs, under the present circumstances, of being required to comply with the four-hour window requirement of Part 732 for scheduling customer premises appointments. Mr. Baever stated that "Allegiance is exposed to liability for customer credits in virtually every instance where an Ameritech technician must make a premises visit to Allegiance's customer. In addition, Allegiance risks alienating customers when four-hour windows are not honored." (Allegiance Ex. 1.0, p. 3) In these instances, the customer holds Allegiance responsible. (Id., p. 6) Similarly, Mr. Cox explained:

[I]f McLeodUSA schedules appointments within four-hour windows, a large portion of those appointments may not be kept, resulting in frustration and inconvenience for our customers. Customers blame McLeodUSA for missed appointments, not the wholesale service provider. Customers who experience missed appointments will be very upset with McLeodUSA and could switch to another provider. (McLeodUSA Ex. 1.0, p. 5)

In addition, even if a CLEC could obtain reimbursement from Ameritech under §732.35 for credits the CLEC must pay to its customer due to missed appointments – which is debatable (see McLeodUSA Ex. 1.0, p. 6) – this is not a satisfactory outcome. Damage will have been

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<sup>3</sup>The practice of changing scheduled "hot cuts" to "all day commits" has been raised by KPMG as Observation 222 in its Section 271 testing of Ameritech's OSS. (McLeodUSA Ex. 1.0, p. 10)

done to the CLEC's reputation in the view of the customer who was inconvenienced by the missed appointment, and additional work is caused for the CLEC. (Allegiance Ex. 1.0, p. 6; McLeodUSA Ex. 1.0, pp. 6-7) Further, the CLEC's performance will look worse in comparison to the ILEC's performance in terms of numbers of credits issued for failing to keep appointments, as reported on the Commission's website pursuant to Section 732.60. At this time, when many consumers are sensitive about the viability of CLECs, such reporting could be very damaging to CLECs' chances for competitive success. (McLeodUSA Ex. 1.2, pp. 2-3)

In response to the testimony of Messrs. Baever and Cox, Staff witness Sam McClerren testified that a CLEC's ability to successfully schedule appointments in a four-hour window is presently limited due to the lack of OSS development. (Staff Ex. 1.0 Rev., p. 2) He noted that the OSS provided by wholesale providers and used by CLECs are not robust enough to provide the information needed to comply with the four-hour appointment window requirement. (Id., p. 5) He testified that if an appointment is missed, the CLEC must provide immediate credit to its customers and then prove it is owed money by the ILEC; even if the CLEC is successful, the time element of money is involved. (Id.) He recognized that a more significant aspect is the damage to the CLEC's reputation: if the CLEC misses a four-hour appointment due to an ILEC's unwillingness or inability to schedule appointments in a four-hour window, the customer will be disappointed. (Id.)

Mr. McClerren recommended that the Commission should give the CLECs' underlying carriers more time to make the necessary OSS modifications to implement the four-hour window. Accordingly, he recommended that implementation of the four-hour window requirement for CLECs should be postponed to no later than December 31, 2002. (Staff Ex. 1.0 Rev., pp. 2-3)

Allegiance and McLeodUSA had proposed (as their preferred alternative of the three they offered, see McLeodUSA Ex. 1.0, pp. 9-10) that compliance with the four-hour window requirement be postponed for CLECs until June 30, 2003, to allow adequate time to develop the necessary processes and procedures with Ameritech. (See Allegiance Ex. 1.0, p. 7, and McLeodUSA Ex. 1.1 Rev.) Allegiance continues to believe that the Commission should postpone implementation of the four-hour appointment requirement for CLECs to June 30, 2003, in order to insure that there is adequate time for the necessary changes to Ameritech's processes and procedures to be developed and put in place for all CLECs. Allegiance has requested that Ameritech provide Allegiance with 24-hour repair commitments and four-hour appointment windows, but as of the time Allegiance's testimony was filed in this docket, Ameritech had not responded with any assurance that it would work toward a process to provide 24-hour repair windows, nor provide commitments to completing repairs within 24 hours. (Allegiance Ex. 1.0, p. 6-7) )

However, McLeodUSA reported in its rebuttal testimony that it has been making progress in working with Ameritech towards developing procedures and processes that Ameritech and CLECs could follow that would result in Ameritech supporting the CLECs' installation and repair needs such that a CLEC would be able to reliably schedule appointments with its customers within four-hour windows. (McLeodUSA Ex. 1.2, pp. 1-2) Given this reported progress, Allegiance could accept Mr. McClerren's recommendation depending on Ameritech's responses to information requests made by the ALJ and Staff at the hearing, but not yet responded to. Specifically, Staff and the ALJ requested that the Ameritech witness provide a report as to the status of Ameritech's efforts to develop revised processes and procedures, as well as confirmation that Ameritech would make any process and procedure changes on this topic

available to all CLECs. The ALJ left the record open in order to be able to receive this information. As of the date of this brief, Ameritech's response is not known nor in the record. Assuming that Ameritech responds with a progress report indicating that the necessary changes to its processes and procedures (or new processes and procedures) are likely to be in place, and made available to all CLECs, by December 31, 2002, then Allegiance could accept Mr. McClerren's recommendation. Even in this event, however, Allegiance would still request that the Commission's order on rehearing recognize the possibility that compliance with the four-hour window requirement for CLECs may need to be further extended to no later than June 30, 2003, if Ameritech is in fact unable to develop and implement the necessary OSS modifications for all CLECs by December 31, 2002.

Allegiance notes that GCI witness Mr. Kolata, as well as Mr. McClerren, testified to the effect that if an underlying carrier is not providing an adequate level of service to a CLEC, or will not adjust its systems to provide an adequate level of service to the CLECs, then the CLECs should file a complaint with the Commission to get the situation resolved. (Staff Ex. 1.0 Rev., p. 6; GCI Ex. 1.0 Rev., pp. 3-4) However, at this time there is a question as to whether the underlying problem is really poor ILEC performance. Until this Commission adopted Part 732 on an expedited basis, there were no requirements or procedures for an ILEC to respond to installation requests or trouble reports from a CLEC in a manner that would support four-hour commitments for CLEC customer appointments. The practical reality is that the wholesale processes have not caught up with the retail requirements. The situation is symptomatic of the problems resulting from the fact that the "retail" service quality requirements of HB 2900 have already been placed into effect through adoption of Part 732, while the "wholesale" service quality rules (mandated by §13-712(g) as adopted by HB 2900) appear to be a year or more away

from being in place.<sup>4</sup> (McLeodUSA Ex. 1.2, pp. 3-4) Further, complaint proceedings are an expensive, resource-diverting and uncertain means to resolve the particular wholesale process issues presented by the four-hour window requirement, and are not conducive to reaching the result that is needed here, which is development of a set of wholesale service procedures between ILECs and CLECs that will allow the CLECs to meet the requirements of Part 732. (*Id.*, p. 4)

Accordingly, based on the considerations set forth above, the Commission should modify the definition of “appointment” in §732.10, and §732.30(c), as follows:

Section 732.10

“Appointment” means an arrangement made by a telecommunications carrier to meet a customer within an agreed 4 hour window, or, until [June 30, 2003] [December 31, 2002], between 8 A.M. and 4 P.M. on a particular day if the carrier uses the resold services, network or network elements of another carrier to provide service to the customer, at the customer’s premises to perform work on the network.

Section 732.30(c)

*If a carrier fails to keep a scheduled repair or installation appointment when a customer premises visit requires a customer to be present, the carrier shall credit the customer \$50 per missed appointment. A credit required by this subsection (c) does not apply when the carrier provides the customer with 24-hour notice of its inability to keep the appointment. The 24-hour notice period shall be construed to mean 24 hours notice by the end of each 4 hour window the day before the scheduled appointment, or until [June 30, 2003] [December 31, 2002], by 4 P.M. of the business day preceding the day of the scheduled appointment if the appointment has been scheduled, by a carrier that uses the resold services, network or network elements of another carrier to provide service to the customer, for between 8 A.M. and 4 P.M. of a particular day.*

**IV. Conclusion**

Allegiance Telecom of Illinois, Inc. requests that the Commission revise the definition of “appointment” in §732.10 of Part 732, and §732.30(c), as proposed by Allegiance herein, to postpone until June 30, 2003 (or until December 31, 2002, if the information requested by Staff

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<sup>4</sup>Proposed Part 731, the carrier-to-carrier wholesale service quality rules mandated by §13-712(g), are being developed in Docket 01-0539.

and the ALJ supports the feasibility of that date with respect to all competitive local exchange carriers), the implementation of the requirement that LECs utilizing the resold services, network or network elements of another carrier must schedule appointments for customer premises visits within four-hour windows.

Respectfully submitted,

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